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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

PATRICIA RIGGS,

Plaintiff and Respondent,

v.

WILLIAM D. NORDQUIST, D.M.D., et al.,

Defendants and Appellants.

D059272

(Super. Ct. No. 37-2009-00099806-
CU-MM-CTL)

APPEAL from an order of the Superior Court of San Diego County, John Meyer,
Judge. Affirmed.

William D. Nordquist, D.M.D., and his professional corporation (together, Dr. Nordquist) appeal from an order denying a motion for judgment notwithstanding the verdict (JNOV). Dr. Nordquist contends that because respondent Patricia Riggs did not present standard of care testimony, the trial court should have granted a JNOV and entered judgment in his favor. We reject his argument and affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

Dr. Nordquist replaced Riggs's removable upper denture with a full denture that was fixed to dental implants. He then extracted her remaining lower teeth and replaced them

with a full denture that was fixed to implants. Riggs experienced difficulty with her new dentures, including teeth hitting each other, biting her lips or cheeks and difficulty with eating and speaking. Dr. Nordquist created a new set of dentures, but Riggs experienced similar problems. After several unsuccessful attempts to fix the problems, Dr. Nordquist told her to come back in six months. Riggs obtained dental treatment elsewhere and sued Dr. Nordquist for, among other things, professional negligence and abandonment.

The matter proceeded to trial. As relevant to this appeal, the jury returned verdicts finding Dr. Nordquist was negligent in his diagnosis or treatment of Riggs and that he had abandoned her. The jury awarded Riggs a total of \$197,000 in compensatory damages. Dr. Nordquist filed motions for a new trial and for JNOV. Each motion noted the absence of any expert testimony stating that Dr. Nordquist violated the applicable standard of care for treatment or abandonment. The trial court denied the JNOV motion without comment, but granted a new trial on the ground the verdict was "against [the] law" explaining how the testimony of Riggs's expert witness, Dr. Winston Chee, failed to establish the standard of care or breach of the standard of care. Dr. Nordquist appeals from the order denying the JNOV motion.

DISCUSSION

The sole issue on appeal is whether the trial court erred when it denied Dr. Nordquist's JNOV motion. Dr. Nordquist contends that the trial court's reason for granting a new trial, insufficiency of the evidence, applied equally to the JNOV motion and that the trial court should have granted a JNOV and entered judgment in his favor. We examine this

issue by reviewing the applicable standards of review for JNOV and new trial motions and explain why the trial court did not err in denying the JNOV motion.

A. Standards of Review

Motions for JNOV and for a new trial constitute different procedures for "[obtaining] a judgment contrary to the verdict rendered by a jury." (*Teitel v. First Los Angeles Bank* (1991) 231 Cal.App.3d 1593, 1602.) "A new trial motion allows a judge to disbelieve witnesses, reweigh evidence and draw reasonable inferences contrary to that of the jury, and still, on appeal, retain a presumption of correctness that will be disturbed only upon a showing of manifest and unmistakable abuse." (*Fountain Valley Chateau Blanc Homeowner's Assn. v. Department of Veterans Affairs* (1998) 67 Cal.App.4th 743, 751 (*Fountain Valley*)). The trial court has wide latitude in deciding a new trial motion and its ruling is reviewed for an abuse of discretion. (*Ibid.*) "The court may grant a new trial even though there [is] sufficient evidence to sustain the jury's verdict on appeal, so long as the court determines the weight of the evidence is against the verdict." (*Candido v. Huitt* (1984) 151 Cal.App.3d 918, 923.)

In contrast, JNOV motions permit a party to prevail when the evidence is legally insufficient to support the verdict, and thus are intended to be " 'dispositive' " motions. (*Fountain Valley, supra*, 67 Cal.App.4th at p. 751.) A trial court may grant a JNOV motion if there is no substantial evidence to support the verdict. (*Tognazzini v. San Luis Coastal Unified School Dist.* (2001) 86 Cal.App.4th 1053, 1057-1058.) In other words, "the court essentially rules the plaintiff *never* can prevail, even if the matter were to be retried." (*Dell'Oca v. Bank of New York Trust Co., N.A.* (2008) 159 Cal.App.4th 531, 548, italics)

added.) In deciding whether to grant the motion, the trial court cannot weigh the evidence or assess credibility (*Castro v. State of California* (1981) 114 Cal.App.3d 503, 512) and must view the evidence in the light most favorable to the verdict, disregard conflicting evidence and indulge in every legitimate inference to support the verdict (*Paykar Construction, Inc. v. Spilat Construction Corp.* (2001) 92 Cal.App.4th 488, 493-494). "On appeal, we determine de novo whether there is substantial evidence to support the verdict and whether the moving party is entitled to judgment in its favor as a matter of law." (*Id.* at p. 494.)

B. Analysis

The trial court correctly instructed the jury that to establish her negligence claim, Riggs needed to show that Dr. Nordquist was negligent and that the negligence was a substantial factor in causing her harm. It also told the jury that: "A dentist is negligent if he fails to use the level of skill, knowledge, and care in diagnosis and treatment that other reasonably careful dentists would use in . . . similar circumstances. The level of skill, knowledge, and care is sometimes referred to as 'the standard of care.' [¶] You must determine the level of skill, knowledge, and care that other reasonably careful dentists would use in . . . similar circumstances, based only on the testimony of the expert witnesses"

To establish her negligence claim, Riggs presented Dr. Chee's testimony, which consisted of about 72 pages of trial transcript. The jury received this testimony as an exhibit, the trial court quoted from this testimony in its ruling and the parties exhaustively analyzed this testimony in their briefs. In granting the new trial motion, the trial court

exercised its discretion to conclude that the verdict was "against [the] law" because Dr. Chee had failed to adequately testify as to the standard of care and breach thereof. Thus, the trial court necessarily reweighed the evidence and drew inferences *different* from that of the jury to conclude "the evidence in the trial that actually took place did not justify the verdict." (*Fountain Valley*, *supra*, 67 Cal.App.4th at p. 752.)

The granting of the new trial motion did not "entail a victory for one side or the other. It simply mean[t] the reenactment of a process which may eventually yield a winner." (*Fountain Valley*, *supra*, 67 Cal.App.4th at p. 751, italics omitted.) The parties did not appeal this ruling and we need not address it. Accordingly, we turn to Dr. Chee's testimony to determine whether the trial court properly denied the JNOV motion because there was some substantial evidence supporting the jury's verdict (*Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1138) or several reasonable inferences could be drawn from the evidence (*Clemmer v. Hartford Insurance Co.* (1978) 22 Cal.3d 865, 877-878).

Dr. Chee testified that Riggs suffered from "incompetent lips," meaning she could not "get her lips together without forcing them together." He displayed two photographs of Riggs to the jury. A photograph of her with no dentures in place revealed that her lips sealed while at rest. The photograph with the dentures in place showed that her lips did not seal. Riggs's dentures were "open so much that she couldn't bring her lips together causing the incompetent lips" He stated that most people with their lips at rest did not look like Riggs.

Dr. Chee testified that "space requirements" for dental implants are critical and that the "vertical dimension" meant the separation of the lower and upper jaw. He stated that there are 10 different ways of measuring the vertical dimension and that the vertical dimension needs to be evaluated because some patients are tolerant and others are intolerant, and dentists providing treatment should assume a patient is intolerant. Vertical dimension is considered a "big issue" in dentistry because "over-[opening]" the vertical dimension can "cause a host of problems." Dr. Chee opined that the problem Riggs experienced was typical of what happens "when you over-open [the] vertical dimension."

Dr. Chee further explained that the dentures should dictate the position of the implants so that problems associated with the vertical dimension can be worked out. As to Riggs, "the prudent way to approach things would be to make her a set of dentures with no implants and work out all her problems of vertical dimension" and then use the dentures as a guide to place the implants, and that this is the way it is taught and that "everybody does it that way." He stated that the implants should not be placed and then the dentures made around the implants.

Dr. Chee testified that a CT scan is done to determine implant size and orientation and that a surgical guide is then used to place the implants. Dr. Chee stated that where there are no teeth, it would be "very difficult" to place implants without using a surgical guide. When asked whether it was below the standard of care to not use a surgical guide for a patient without teeth such as Riggs, Dr. Chee responded that it was "not a clear-cut question," but that it was "really not prudent to place implants without some kind of guidance"

Dr. Chee stated that anyone practicing in the field of implant dentistry should use at least two or three methods to measure the vertical dimension and that the standard of care required that adequate measurements be taken ahead of time and that it would be outside the standard of care to not do so. However, Dr. Nordquist did not take a CT of Riggs or use a surgical guide, and Riggs's chart did not note that Dr. Nordquist adequately measured and planned for the vertical dimension. This evidence suggested to Dr. Chee that the failure to adequately measure and plan for the vertical dimension turned out to be a large problem for Riggs. Riggs also testified that she was never told about measuring for the vertical dimension and that Dr. Nordquist never took a measuring device to measure her face and mouth.

In considering this evidence, the jury could have concluded that the standard of care required that Dr. Nordquist measure and plan for the vertical dimension, that he failed to do so and that this failure caused Riggs's problems and breached the standard of care. However, this is not the only possible conclusion. When reevaluating the evidence in connection with the new trial motion, the trial court could have noted that because Riggs never testified as to whether she suffered from incompetent lips before Dr. Nordquist treated her, that Dr. Nordquist's treatment did not cause this problem. Similarly, although Dr. Chee's testimony suggested that the standard of care required that the vertical dimension be measured and that Dr. Nordquist did not measure the vertical dimension in Riggs because Dr. Nordquist did not take a CT scan, use a surgical guide or note measurements in Riggs's chart, the trial court could have concluded that Dr. Nordquist used some other method to determine the vertical dimension, and that Dr. Nordquist did not violate the standard of care

in doing so. Dr. Chee's testimony also suggested that the standard of care required that dentures be made before implants are placed and that it would have been "prudent" for Dr. Nordquist to have approached things this way for Riggs. Dr. Chee, however, never testified that Dr. Nordquist failed to follow this procedure for Riggs and that this failure violated the standard of care.

Simply put, some evidence supported the jury's negligence finding and it was possible for the trial court to draw different inferences from the evidence. Accordingly, the trial court was required to deny the JNOV motion.

DISPOSITION

The order is affirmed. Respondent is entitled to recover her costs on appeal.

McINTYRE, J.

WE CONCUR:

BENKE, Acting P. J.

McDONALD, J.